



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/769,604
Applicant : Stephen M. Howard et al.
Filed : January 25, 2001
T.C./A.U. : 2157
Examiner : Ramy M. Osman

Confirmation No.: 4397

Docket No. : EMC-002PUS
Customer No. : 022494

Certificate of Mailing (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: MS Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on the date set forth below.

29 Mar 05
Date of Signature
and Mail Deposit

By:

Paul D. Durkee
Paul D. Durkee
Reg. No. 41,003

REQUEST FOR EXTENSION OF TIME

MS Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is requested that the time for response to this Office Action dated November 30, 2004 be extended for a one-month period of time to end March 30, 2005, under the provisions of 37 C.F.R. §1.136. The fee of \$120.00 called for by 37 C.F.R. §1.17 is enclosed herewith.

04/01/2005 PRIKONEN 00000006 09769604

01 FC:1251

120.00 DP

REFERENCE: 00000006 00000006 00000006

01 FC:1251

Adjustment Date: 08/22/2005 SDIRETA2
06/06/2005 RBRDWN1 00000011 500845 09769604
01 FC:2253 390.00 CR

BEST AVAILABLE COPY

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/769,604
Applicant : Stephen M. Howard, et al.
Filed : January 25, 2001
T.C./A.U. : 2157
Examiner : Ramy M. Osman

Confirmation No.: 4397

Docket No. : EMC-002PUS
Customer No. : 022494

Certificate of Mailing (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being transmitted via facsimile to Commissioner of Patents at 703-746-9195 or deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Deposit Account Branch Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on the date set forth below.

7 Jul 05
Date of Signature
and Mail Deposit

By: 

Paul D. Durkee
Reg. No. 41,003

REQUEST FOR REFUND

Deposit Account Branch
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Attn: Latrice Sims

Dear Latrice:

Our office filed a Response on March 29, 2005 to an Office Action dated November 30, 2004. When filing this Response, we filed a one month extension of time and included a check in the amount of \$120.00 to cover the cost of the one month extension of time. Our monthly deposit account number 50-0845 for the month of June, 2005, was charged in the amount of \$390.00 for a three month extension of time. Note that when the response was filed a one month extension of

Appl. No. 09/769,604

Docket No. EMC-002PUS

time was due and a check in the amount of \$120.00 was included with the filing. Therefore, please credit our deposit account for the erroneous charge made by the USPTO for \$390.00.

Enclosed is a copy of the Monthly Statement of Deposit Account for Deposit Account 50-0845 showing the erroneous charge to Docket No. EMC-002PUS, Application Number 09/769,604. Also enclosed is a copy of the Response as filed.

Please call the undersigned attorney if you have any questions or if further information is required.

Dated: 7 Jul 05

Respectfully submitted,

DALY, CROWLEY, MOFFORD & DURKEE, LLP

By: Paul D. Durkee

Paul D. Durkee

Reg. No. 41,003

Attorney for Applicant(s)

354A Turnpike Street, Suite 301A

Canton, MA 02021-2714

Tel.: (781) 401-9988, ext. 21

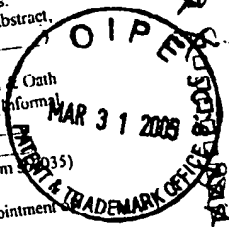
Fax: (781) 401-9966

pdd@dc-m.com

\\server01\client_files\Prolaw documents\EMC-002PUS\13487.doc

App. No. 09/1769604 Attorney Docket No. CMC-0022 By: Pro/ram
 Title: late Book system with a variable rate
 Application of: Stephen M. Howland et al in the U.S. PTO, was received in the Mail Room on the date stamped hereon:
 *The Following, DUE _____

<input type="checkbox"/> Mailing by Express Mail (37 CFR 1.10)	<input type="checkbox"/> PCT Request 101 (____ sheets)
<input type="checkbox"/> Express Mail Label No. _____	<input type="checkbox"/> Chapter II Demand
<input checked="" type="checkbox"/> Cert. of Mailing under 37 CFR 1.8(a)	<input type="checkbox"/> PCT Fee/Calculation/Authorization Sheet
<input type="checkbox"/> Application for Patent incl. _____ pgs.	<input type="checkbox"/> Response to Correct Defects
<input type="checkbox"/> (____ pgs.) Specification, (____ pgs.) Abstract	<input checked="" type="checkbox"/> Check for \$ <u>120</u> Check # <u>3597</u>
<input type="checkbox"/> (____ pgs.) Claims (Claims _____)	<input type="checkbox"/> Check for \$ _____ Check # _____
<input type="checkbox"/> Declaration Petition / Power of Attorney	<input type="checkbox"/> Amendment Response
<input type="checkbox"/> Design Patent Application & Declaration of Oath	<input type="checkbox"/> Letter to Official Draftsman
<input type="checkbox"/> Drawings _____ Sheet(s) _____ Formal _____ Informal _____	<input type="checkbox"/> Response to Notice to File Missing Parts
<input type="checkbox"/> Request For Non-Publication (PTO Form 1449)	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> CP/RCE	<input type="checkbox"/> Power of Attorney
<input type="checkbox"/> Revocation of Power of Attorney/Appointment	<input type="checkbox"/> Brief (____ x3)
<input type="checkbox"/> New Power of Attorney	<input type="checkbox"/> Petition for Ext. of Time
<input type="checkbox"/> Other _____	<input type="checkbox"/> Transmittal Letter <u>PTO/SB/24</u>
<input type="checkbox"/> Info. Disc. Statement, Substitute for PTO Form 1449	<input type="checkbox"/> Fee Transmittal Letter <u>PTO/SB/17</u>
<input type="checkbox"/> (Form PTO/SB/08A) and _____ Reference(s) Cited	<input type="checkbox"/> Assignment
Mailing Date <u>March 29 2005</u>	<input type="checkbox"/> Maintenance Fee Transmittal



Docketed

FILED
 4.5.05

App. No. 091769604 Attorney Docket No. EMC-10000 By: P201/ram
Title: 1040 P201/ram
Application of: 1040 P201/ram
*The Following, DUE: SEP 29 2005 in the U.S. PTO, was received in the Mail Room on the date stamped hereon:

- | | |
|---|---|
| <input type="checkbox"/> Mailing by Express Mail (37 CFR 1.10) | <input type="checkbox"/> PCT Request 101 (sheets) |
| <input type="checkbox"/> Express Mail Label No. | <input type="checkbox"/> Chapter II Demand |
| <input checked="" type="checkbox"/> Cert. of Mailing under 37 CFR 1.8(a) | <input type="checkbox"/> PCT Fee/Calculation/Authorization Sheet |
| <input type="checkbox"/> Application for Patent incl. (pgs.) Specification, (pgs.) Abstract, (pgs.) Claims (Claims) | <input type="checkbox"/> Response to Correct Defects |
| <input type="checkbox"/> Declaration Petition / Power of Attorney | <input checked="" type="checkbox"/> Check for \$120 Check # 3597 |
| <input type="checkbox"/> Design Patent Application & Declaration & Oath | <input checked="" type="checkbox"/> Check for \$ Amendment response |
| <input type="checkbox"/> Drawings Sheet(s) Formal Informal (Figs.) | <input type="checkbox"/> Letter to Official Draftsman |
| <input type="checkbox"/> Request For Non-Publication (PTO Form sb0035) | <input type="checkbox"/> Response to Notice to File Missing Parts |
| <input type="checkbox"/> CPA/RCE | <input type="checkbox"/> Notice of Appeal |
| <input type="checkbox"/> Revocation of Power of Attorney/Appointment of New Power of Attorney | <input type="checkbox"/> Power of Attorney |
| <input type="checkbox"/> Other | <input type="checkbox"/> Brief (x3) |
| <input type="checkbox"/> Info. Disc. Statement, Substitute for PTO Form 1449 (Form PTO/SD/08A) and reference(s) Cited | <input checked="" type="checkbox"/> Petition for Ext. of Time |
| | <input checked="" type="checkbox"/> Transmittal Letter P201/ram |
| | <input checked="" type="checkbox"/> Fee Transmittal Letter P201/ram |
| | <input type="checkbox"/> Assignment |
| | <input type="checkbox"/> Maintenance Fee Transmittal |

Mailing Date March 29 2005

Docket

DALY, CROWLEY & MOFFORD, LLP.
275 TURNPIKE STREET SUITE 101
CANTON, MA 02021

Assistant Commissioner for Patents

PAY TO THE ORDER OF

One hundred twenty and 00/100 \$ 120.00 DOLLARS



BANK OF CANTON
888.828.1690 www.bankofcanton.com

FOR EMC - 0028 US; 7 more ext

Danay Mofford

#003597# 12113731020 42 0009921#

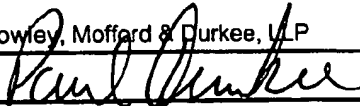
3597

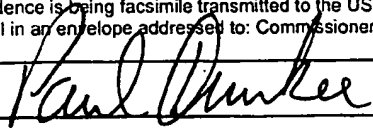
55-7310/2113 04

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/769,604	
	Filing Date	January 25, 2001	
	First Named Inventor	Stephen M. Howard	
	Art Unit	2157	
	Examiner Name	Ramy M. Osman	
Total Number of Pages in This Submission	14	Attorney Docket Number	EMC-002PUS

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC Appeal Notice, Brief, Reply Brief <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard
Remarks In the event a petition for extension of time is required by this paper and not otherwise provided, such petition is hereby made and authorization is provided herewith to charge deposit account No. 50-0845 for the cost of such extension.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Daly, Crowley, Mofford & Durkee, LLP		
Signature			
Printed name	Paul D. Durkee		
Date	29 Mar 05	Reg. No.	41,003

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	Paul D. Durkee	Date	29 Mar 05

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 120

Complete if Known

Application Number	09/769,604
Filing Date	January 25, 2001
First Named Inventor	Stephen M. Howard
Examiner Name	Ramy M. Osman
Art Unit	2157
Attorney Docket No.	EMC-002PUS

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):
☐ Deposit Account Deposit Account Number: 50-0845 Deposit Account Name: Daly, Crowley, Mofford & Durkee, LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)** **Multiple Dependent Claims**
- 20 or HP = 0 x = 0 **Fee (\$)** **Fee Paid (\$)**
HP = highest number of total claims paid for, if greater than 20
Indep. Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)**
- 3 or HP = 0 x = 0
HP = highest number of independent claims paid for, if greater than 3

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets **Extra Sheets** **Number of each additional 50 or fraction thereof** **Fee (\$)** **Fee Paid (\$)**
- 100 = 0 / 50 = 0 (round up to a whole number) x 0 = 0

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount) **Fees Paid (\$)**
Other: One Month Extension of Time 0
120

SUBMITTED BY

Signature		Registration No. 41,003	Telephone 781.401.9988 ext. 21
Name (Print/Type)	Paul D. Durkee	(Attorney/Agent)	Date 29 Mar 05

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/769,604
Applicant : Stephen M. Howard et al.
Filed : January 25, 2001
T.C./A.U. : 2157
Examiner : Ramy M. Osman

Confirmation No.: 4397

Docket No. : EMC-002PUS
Customer No. : 022494

Certificate of Mailing (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: MS Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on the date set forth below.

29 Mar 05

Date of Signature
and Mail Deposit

By: 

Paul D. Durkee
Reg. No. 41,003

REQUEST FOR EXTENSION OF TIME

MS Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is requested that the time for response to this Office Action dated November 30, 2004 be extended for a one-month period of time to end March 30, 2005, under the provisions of 37 C.F.R. §1.136. The fee of \$120.00 called for by 37 C.F.R. §1.17 is enclosed herewith.

In the event any additional fee is required, please charge such amount to the Patent and Trademark Office Deposit Account No. 50-0845.

Dated:

29 Mar 05

Respectfully submitted,

DALY, CROWLEY & MOFFORD, LLP

By:

Paul D. Durkee

Paul D. Durkee

Reg. No. 41,003

Attorney for Applicant(s)

275 Turnpike Street, Suite 101

Canton, MA 02021-2354

Tel.: (781) 401-9988, ext. 21

Fax: (781) 401-9966

pdd@dc-m.com

8211

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/769,604
Applicant : Stephen M. Howard, et al.
Filed : January 25, 2001
T.C./A.U. : 2157
Examiner : Ramy M. Osman

Confirmation No.: 4397

Docket No. : EMC-002PUS
Customer No. : 022494

Certificate of Mailing (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being transmitted via facsimile to
Commissioner for Patents at 703-872-9306 or deposited with the United States Postal
Service with sufficient postage as first-class mail in an envelope addressed to: Mail Stop
Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on
the date set forth below.

29 Mar 05
Date of Signature
and Mail Deposit

By: 

Paul D. Durkee
Reg. No. 41,003

RESPONSE

Mail Stop Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Official Action dated November 30, 2004, please amend the
above-identified patent application as follows.

Amendments to the Claims are reflected in the listing of claims which begins on
page 2 of this paper.

Remarks/Arguments begin on page 6 of this paper.

Amendments to the Claims:

This listing of the claims will replace all prior versions, and listings, of the claims in the application:

- 1 1. (Currently Amended) A method of restoring backed up data, comprising:
2 retrieving, by a data backup and storage system, a list of objects that are restorable
3 by a client;
4 displaying the list of restorable objects for browsing by a user;
5 generating a list of restorable objects marked for restoration by the user, wherein
6 each of the restorable objects is associated with a particular library;
7 submitting [[a]] the list of marked restorable objects [[marked]] for restoration by
8 the client;
9 executing a restoration of the submitted list of marked restorable objects via a
10 remote procedure call such that multiple restore submissions can be made prior to restore
11 execution.
- 1 2. (Original) The method according to claim 1, further including executing
2 multiple restore submissions concurrently.
- 1 3. (Original) The method according to claim 1, further including initiating a
2 restore session for the client.
- 1 4. (Original) The method according to claim 3, further including creating a
2 restore engine process for the retrieving, browsing, submitting and executing of
3 restore objects.
- 1 5. (Original) The method according to claim 4, wherein the client communicates
2 with the restore engine process via remote procedure calls.
- 1 6. (Original) The method according to claim 4, wherein the restore engine
2 process is created by a dispatch daemon on a backup storage system server.

- 1 7. (Original) The method according to claim 4, wherein the restore engine
2 process is terminated upon completion of the restore execution.
- 1 8. (Original) The method according to claim 4, wherein the restore engine
2 process runs on a backup data storage server and further including creating a work
3 item restore process on the backup data server, a server restore process for
4 generating a stream of data to be restored, and a client restore process for
5 receiving the data stream.
- 1 9. (Original) The method according to claim 4, further including detecting and
2 identifying libraries that support associated catalogs of backed up data for
3 processing of backed up data by the restore engine process.
- 1 10. (Original) The method according to claim 9, further including adding a new
2 library supporting new methods of backing up data.
- 1 11. (Original) The method according to claim 9, further including determining
2 object types for backed up data supported by the libraries.
- 1 12. (Currently Amended) A method of restoring backed up data, comprising:
2 initiating a restore session for a first client via a dispatch daemon running on a
3 data storage server through a graphical user interface associated with the client;
4 creating a restore engine process in response to a request by the dispatch daemon;
5 establishing a connection between the graphical user interface and the restore
6 engine process;
7 displaying a list of restorable objects for browsing by a user associated with the
8 client via the graphical user interface under the control of the restore engine process;
9 [determining] identifying restorable objects marked for restoration by the user
10 under control of the restore engine process;
11 storing a list of marked restorable objects submitted by the client to the restore
12 engine process; and

13 executing the restoration of the marked objects under control of the restore engine
14 process independently of the browsing, marking and submitting of the restorable objects
15 such that multiple restore submissions can be made prior to restore execution.

1 13. (Original) The method according to claim 12, wherein the client
2 communicates with the restore engine process via remote procedure calls.

1 14. (Original) The method according to claim 12, further including supporting a
2 new backup data method by adding a library corresponding to the new backup
3 data method.

1 15. (Currently Amended) A data backup and storage system, comprising:
2 a backup storage system for storing backup data from a client storage system
3 under control of a user associated with the client, the backup storage system including:
4 a server creating a restore engine process as part of a restore session with a
5 client, the restore engine communicating with the client via remote procedure calls to
6 allow the user to browse restorable objects, mark selected ones of the restorable objects
7 for restoration, submit a list of restorable objects marked by the user, and execute
8 restoration of the submitted list of restorable objects, wherein the restore execution is
9 performed independently of the browse, mark and submit operations such that multiple
10 restore submissions can be made prior to execution of the restore; and
11 a work item restore process, a server restore process, and a client restore process
12 created by the restore engine process to form a restore triangle for executing the restore
13 operation..

1

1 16. (Canceled)

1

1 17. (Original) The system according to claim 15, wherein the restore engine
2 process processes libraries upon restore initialization such that libraries can be
3 added to the system for supporting new backup methods.

Reply to Office Action of November 30, 2004

- 1 18. (Original) The system according to claim 17, further including a dispatch
2 daemon for initiating the restore session.
- 1 19. (Original) The system according to claim 15, further including further restore
2 engine processes corresponding to further restore sessions initiated by additional
3 clients.
- 1 20. (Original) The system according to claim 19, further including additional
2 restore triangles for executing multiple work item restores concurrently.

REMARKS

Applicant respectfully requests reconsideration of the above-identified patent application in view of the amendments set forth above and the remarks below.

Claims 1-15 and 17-20 are pending in the application and are rejected. Claim 16 was previously canceled.

Claim Objections

Claim 15 is amended to include a colon after the word "including" as suggested by the Examiner.

The Rejections Under 35 U.S.C. §112, First Paragraph

The Examiner rejects Claim 1 under 35 U.S.C. §112 first paragraph first paragraph. While Applicant does not necessarily agree with the Examiner's assertion that claim 1 omits essential elements, Applicant amends claim 1 to clarify browsing and marking steps. Applicant makes this amendment not for reasons of patentability but rather to expedite allowance of the present application.

The Rejections Under 35 U.S.C. §112, Second Paragraph

The Examiner rejects Claims 1-11 under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner asserts that the limitation "retrieving a list of object..." is indefinite on the basis that there is no indication as to who is retrieving the list. While Applicant does not agree that the retrieving must be identified in present method claim 1, Applicant amends claim 1 to clarify that a data backup and storage system retrieves the list of objects to expedite allowance of the present application and not for reasons of patentability. Applicant also amends claim 1 to clarify the lists of different objects as set forth above.

Claim 12 is amended to recite "identifying" to replace "determining" to more clearly define the claimed invention.

With respect to claim 15 and the term "restore triangle," Applicant is unclear as to the Examiner's basis for rejection. As the Examiner notes, this term is shown and described multiple times in Applicant's specification. In addition, in an exemplary embodiment Applicant shows well-known Unix functions (auxproc, rexcpio, xcpiogen) that can be used to provide the "restore triangle," which is described in the specification.

The Prior Art Rejections

The Examiner rejects Claims 1-20 under 35 U.S.C. §103(a) over U.S. Patent No. 6,611,850 to Shen in view of U.S. Patent No. 6,427,149 to Rodriguez.

Shen merely discloses an apparatus for file backup and restoration. Applicant submits that Shen clearly falls within the prior art systems described in the Background of the Invention section of Applicant's specification that require serial browsing, marking and submitting of items for restoration. Further, as described in the passage in Shen cited by the Examiner (col. 19, lines 10-30 and 35-50), Shen is limited to restoration of a *file*. Shen does not contemplate multiple restoring *objects*, such as databases, files, etc., as described in Applicant's specification, let alone executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that multiple restore submissions can be made prior to restore execution.

In contrast, amended claim 1 requires a method of restoring backed up data, including retrieving, by a data backup and storage system, a list of objects that are restorable by a client, displaying the list of restorable objects for browsing by a user, generating a list of restorable *objects marked for restoration* by the user, wherein *each of the restorable objects is associated with a particular library*, submitting the list of marked restorable objects for restoration by the client, and executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that *multiple restore submissions can be made prior to restore execution*.

Applicant submits that Shen simply does not contemplate the claimed method of restoring backed up data, which requires, among other things, generating a list of restorable *objects marked for restoration* by the user, wherein *each of the restorable objects is associated with a particular library*, and executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that *multiple restore submissions can be made prior to restore execution*.

While Applicant submits that the invention as claimed is quite different from that of Shen and/or Rodriguez, Applicant amends claim 1 to clarify that "*each of the restorable objects is associated with a particular library*," as described in the specification, at page 13, for example. Libraries are further described throughout the application. Libraries provide information contained in catalogs of back up data to a restore engine for allowing a user to browse and mark files for restoration. Submit objects include one or more submit files containing information extracted from the library catalogs associated with marked objects by the restore engine to enable restoration of the objects.

Applicant submits that Rodriguez fails to overcome any of the deficiencies of Shen set forth above.

Rodriguez merely teaches a technique to enable an Internet user to utilize a browser application to see and select files in a ZIP archive file by providing hyper text links in an HTML document. Rodriguez avoids the need for a user to download the entire ZIP archive file. Applicant presumes the Examiner is quite familiar with zipping files to compress data in an archive file and unzipping archive files. Applicant submits that the trivial archive file recovery technique taught by Rodriguez is quite irrelevant to backing up huge amounts of data contained in submit objects, which can include databases, and restoring the backed up data using a data backup system, such as the one shown and described in Applicant's specification.

Applicant submits that Rodriguez fails to teach or suggest any of the claimed method of restoring backed up data, which requires, among other things, generating a list of restorable *objects marked for restoration* by the user, wherein *each of the restorable objects is associated with a particular library*, and executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that *multiple restore submissions can be made prior to restore execution*.

Accordingly, Applicant submits that claim 1 is patentably distinguishable over Shen and/or Rodriguez. For at least substantially the same reasons, Applicant submits that claims 2-15 and 17-20 are also distinguishable over the cited references.

Moreover, as the Examiner is well aware, to properly establish prima facie obviousness a motivation to combine the references as proposed must be identified. In the present case, the Examiner has impermissibly used Applicant's disclosure as a roadmap in attempt to identify and combine certain features of the claimed invention to establish, using hindsight, that the invention is obvious. The Examiner has identified no such motivation to combine the references as proposed. Applicant submits that, absent Applicant's specification, the Examiner can identify no such motivation since none exists. Shen is directed to a system for backing up and restoring data using a "backup copy generating process" and a "restore process," which are explained in great detail. Rodriguez is directed to simply accessing files in a zipped archive file over the Internet using a browser, which is hardly compatible with the system taught by Shen. Rodriguez is limited to zipped archive files and has no relationship to, and is useless for, the backup and restore system of Shen.

In view of the above, Applicant submits that claims 1-15 and 17-20 are patentably distinguishable over the cited references.

The Examiner is respectfully invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

Applicant does not acquiesce to any assertion made by the Examiner that is not specifically addressed herein.

The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845.

Dated: 29 Mar 05

Respectfully submitted,

DALY, CROWLEY & MOFFORD, LLP

By: Paul D. Durkee

Paul D. Durkee
Reg. No. 41,003
Attorney for Applicant(s)
275 Turnpike Street, Suite 101
Canton, MA 02021-2354
Tel.: (781) 401-9988,
Fax: (781) 401-9966
pdd@dc-m.com

6600.doc



**United States
Patent and
Trademark Office**

Return To:

USPTO
Home
Page

Finance
Online
Shopping
Page

Deposit Account Statement

Requested Statement Month: June 2005
Deposit Account Number: 500845
Name: DALY, CROWLEY, & MOFFORD
Attention: JUDITH C CROWLEY, ESQ
Address: 275 TURNPIKE STREET
City: CANTON
State: MA
Zip: 02021-2310
Country: UNITED STATES OF AMERICA

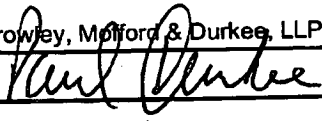
DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
06/03	141	60664973	MOCA004PUSP	8021	OK \$40.00	\$16,059.50
06/06	13	09769604	EMC-002PUS	2253	\$390.00	\$15,669.50 <i>ext of term 3rd mos</i>
06/06	133	10854719	RTN2-166PTW	8007	OK \$20.00	\$15,649.50
06/06	139	10854720	RTN2-162PTW	8007	OK \$20.00	\$15,629.50
✓ 06/06	144	10854705	RTN2-165PTW	8007	OK \$20.00	\$15,609.50
✓ 06/08	1608	78646110	RTN-002TUS	7001	OK \$325.00	\$15,284.50 <i>Trm appl.</i>
06/21	13	11125300	ALLEG179PUS	8021	OK \$40.00	\$15,244.50
06/22	183	60579466	RTN-235AAU	8007	OK \$20.00	\$15,224.50
06/24	15	11071065	REDDI-007PUS	8021	OK \$40.00	\$15,184.50
06/27	233	10889281	MIT-15PTW	8007	OK \$20.00	\$15,164.50
06/27	235	10889282	MIT-116PTW	8007	OK \$20.00	\$15,144.50
06/27	1387	10511862	RTN-164PUS	8021	OK \$40.00	\$15,104.50
06/28	119	11071065	REDDI-007PUS	2251	OK \$60.00	\$15,044.50 <i>Trm ext of term</i>
06/30	127	11042878	RTN-218PUS	8021	OK \$40.00	\$15,004.50
START		SUM OF		SUM OF		END
BALANCE		CHARGES		REPLENISH		BALANCE
\$16,099.50		\$1,095.00		\$.00		\$15,004.50

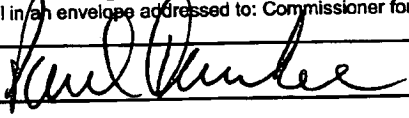
Need Help? | [USPTO Home Page](#) | [Finance Online Shopping Page](#)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/769,604	
	Filing Date	January 25, 2001	
	First Named Inventor	Stephen M. Howard	
	Art Unit	2157	
	Examiner Name	Ramy M. Osman	
Total Number of Pages in This Submission	19	Attorney Docket Number	EMC-002PUS

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC Appeal Notice, Brief, Reply Brief
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Request for Refund	Return Postcard
	<input type="checkbox"/> CD, Number of CD(s) _____	Request for Refund
	<input type="checkbox"/> Landscape Table on CD	Copy of Response to OA dated 11-30-04 as filed on 3-29-05
	Remarks	Copy of Monthly Deposit Account for Deposit Account No. 50-0845
	In the event a petition for extension of time is required by this paper and not otherwise provided, such petition is hereby made and authorization is provided herewith to charge deposit account No. 50-0845 for the cost of such extension.	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Daly, Crowley, Morford & Durkee, LLP	
Signature		
Printed name	Paul D. Durkee	
Date	7 Jul 05	Reg. No. 41,003

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:		
Signature		
Typed or printed name	Paul D. Durkee	Date 7 Jul 05

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☒ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☐ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.